



April 10, 2009

ENGROSSED SENATE BILL No. 34

DIGEST OF SB 34 (Updated April 8, 2009 3:31 pm - DI 69)

Citations Affected: IC 34-30; IC 35-38; IC 35-44; IC 35-50; noncode.

Synopsis: Various criminal law provisions. Provides, for purposes of the crime of assisting a criminal, that it is not a defense that the person assisted has not been prosecuted, has not been convicted, or has been acquitted by reason of insanity. Allows a prosecuting attorney to petition a court to order a defendant charged with the commission of: (1) a potentially disease transmitting offense; or (2) an offense involving the transmission of a bodily fluid; to submit to a screening test to determine whether the defendant is infected with a dangerous disease. Repeals a similar provision in current law that applies only to screening tests for HIV. Lists the offense of dealing in methamphetamine as an unrelated conviction in the law concerning habitual offenders when determining if the state may seek to have a person sentenced as an habitual offender. Establishes the 15 member criminal code evaluation commission (commission) to evaluate the criminal laws of Indiana. Provides that, if the commission determines changes are necessary or appropriate, the commission shall make recommendations to the general assembly for the modification of the criminal laws of Indiana. Requires the commission to submit a final report to the legislative council before November 1, 2011.

Effective: Upon passage; July 1, 2009.

Bray, Head

(HOUSE SPONSORS — PIERCE, FOLEY, LAWSON L)

January 7, 2009, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

February 5, 2009, amended, reported favorably — Do Pass.

February 9, 2009, read second time, ordered engrossed.

February 10, 2009, engrossed.

February 17, 2009, read third time, passed. Yeas 42, nays 8.

HOUSE ACTION

February 25, 2009, read first time and referred to Committee on Courts and Criminal Code.

April 9, 2009, amended, reported — Do Pass.

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April 10, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 34

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-30-2-149.4 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2009]: **Sec. 149.4. IC 35-38-1-10.8(e)**
4 **(Concerning a mental health service provider who discloses**
5 **information in compliance with IC 35-38-1-10.8).**

6 SECTION 2. IC 35-38-1-10.5, AS AMENDED BY P.L.125-2007,
7 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2009]: Sec. 10.5. (a) The court:

9 (1) shall order that a person undergo a screening test for the
10 human immunodeficiency virus (HIV) if the person is:

11 (A) convicted of an offense relating to a criminal sexual act
12 and the offense created an epidemiologically demonstrated
13 risk of transmission of the human immunodeficiency virus
14 (HIV); or

15 (B) convicted of an offense relating to controlled substances
16 and the offense involved:

17 (i) the delivery by any person to another person; or

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(ii) the use by any person on another person;
 of a contaminated sharp (as defined in IC 16-41-16-2) or other
 paraphernalia that creates an epidemiologically demonstrated
 risk of transmission of HIV by involving percutaneous contact;
 and

(2) may order that a person undergo a screening test for the
 human immunodeficiency virus (HIV) if the court has made a
 finding of probable cause after a hearing under section ~~10.7~~ **10.8**
 of this chapter.

(b) If the screening test required by this section indicates the
 presence of antibodies to HIV, the court shall order the person to
 undergo a confirmatory test.

(c) If the confirmatory test confirms the presence of the HIV
 antibodies, the court shall report the results to the state department of
 health and require a probation officer to conduct a presentence
 investigation to:

(1) obtain the medical record of the convicted person from the
 state department of health under IC 16-41-8-1(a)(3); and

(2) determine whether the convicted person had received risk
 counseling that included information on the behavior that
 facilitates the transmission of HIV.

(d) A person who, in good faith:

(1) makes a report required to be made under this section; or

(2) testifies in a judicial proceeding on matters arising from the
 report;

is immune from both civil and criminal liability due to the offering of
 that report or testimony.

(e) The privileged communication between a husband and wife or
 between a health care provider and the health care provider's patient is
 not a ground for excluding information required under this section.

(f) A mental health service provider (as defined in IC 34-6-2-80)
 who discloses information that must be disclosed to comply with this
 section is immune from civil and criminal liability under Indiana
 statutes that protect patient privacy and confidentiality.

SECTION 3. IC 35-38-1-10.6, AS AMENDED BY P.L.125-2007,
 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 JULY 1, 2009]: Sec. 10.6. (a) The state department of health shall
 notify victims of an offense relating to a criminal sexual act or an
 offense relating to controlled substances if tests conducted under
 section 10.5 or ~~10.7~~ **10.8** of this chapter confirm that the person tested
 had antibodies for the human immunodeficiency virus (HIV).

(b) The state department of health shall provide counseling to

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persons notified under this section.

SECTION 4. IC 35-38-1-10.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 10.8. (a) The following definitions apply throughout this section:**

(1) "Bodily fluid" means blood, human waste, or any other bodily fluid.

(2) "Dangerous disease" means any of the following:

(A) Chancroid.

(B) Chlamydia.

(C) Gonorrhea.

(D) Hepatitis.

(E) Human immunodeficiency virus (HIV).

(F) Lymphogranuloma venereum.

(G) Syphilis.

(H) Tuberculosis.

(3) "Offense involving the transmission of a bodily fluid" means any offense (including a delinquent act that would be a crime if committed by an adult) in which a bodily fluid is transmitted from the defendant to the victim in connection with the commission of the offense.

(4) "Potentially disease transmitting offense" means any of the following:

(A) Battery by body waste (IC 35-42-2-6).

(B) Rape (IC 35-42-4-1).

(C) Criminal deviate conduct (IC 35-42-4-2).

(D) Child molesting involving intercourse or deviate sexual conduct (IC 35-42-4-3(a)).

(E) Child seduction (IC 35-42-4-7).

(F) Sexual misconduct with a minor (IC 35-42-4-9).

(G) Sexual misconduct by a service provider (IC 35-44-1-5).

(H) Incest (IC 35-46-1-3).

The term includes an attempt to commit an offense referred to in clauses (A) through (H) and a delinquent act that would be a crime referred to in clauses (A) through (H) if committed by an adult.

(b) This subsection applies only to a defendant who has been charged with a potentially disease transmitting offense. The prosecuting attorney may petition a court to order a defendant charged with the commission of a potentially disease transmitting offense to submit to a screening test to determine whether the

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defendant is infected with a dangerous disease. In the petition, the prosecuting attorney must set forth information demonstrating that the defendant has committed a potentially disease transmitting offense. The court shall set the matter for hearing not later than forty-eight (48) hours after the prosecuting attorney files a petition under this subsection. The alleged victim of the potentially disease transmitting offense with which the defendant is charged is entitled to attend the hearing. If, following the hearing, the court finds probable cause to believe that the defendant has committed a potentially disease transmitting offense, the court may order the defendant to submit to a screening test for one (1) or more dangerous diseases.

(c) This subsection applies only to a defendant who has been charged with an offense involving the transmission of a bodily fluid. The prosecuting attorney may petition a court to order a defendant charged with the commission of an offense involving the transmission of a bodily fluid to submit to a screening test to determine whether the defendant is infected with a dangerous disease. In the petition, the prosecuting attorney must set forth information demonstrating that:

(1) the defendant has committed an offense; and

(2) a bodily fluid was transmitted from the defendant to the victim in connection with the commission of the offense.

The court shall set the matter for hearing not later than forty-eight (48) hours after the prosecuting attorney files a petition under this subsection. The alleged victim of the offense involving the transmission of a bodily fluid with which the defendant is charged is entitled to attend the hearing. If, following the hearing, the court finds probable cause to believe that the defendant has committed an offense and that a bodily fluid was transmitted from the defendant to the alleged victim in connection with the commission of the offense, the court may order the defendant to submit to a screening test for one (1) or more dangerous diseases.

(d) The testimonial privileges applying to communication between a husband and wife and between a health care provider and the health care provider's patient are not sufficient grounds for not testifying or providing other information at a hearing conducted in accordance with this section.

(e) A mental health service provider (as defined in IC 34-6-2-80) who discloses information that must be disclosed to comply with this section is immune from civil and criminal liability under Indiana statutes that protect patient privacy and confidentiality.

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(f) The results of a screening test conducted under this section shall be kept confidential if the defendant ordered to submit to the screening test under this section has not been convicted of the potentially disease transmitting offense or offense involving the transmission of a bodily fluid with which the defendant is charged. The results may not be made available to any person or public or private agency other than the following:

- (1) The defendant and the defendant's counsel.
- (2) The prosecuting attorney.
- (3) The department of correction.
- (4) The alleged victim and the alleged victim's counsel.

The results of a screening test conducted under this section may not be admitted against a defendant in a criminal proceeding.

(g) An alleged victim may disclose the results of a screening test to which a defendant is ordered to submit under this section to an individual or organization to protect the health and safety of or to seek compensation for:

- (1) the alleged victim;
- (2) the alleged victim's sexual partner; or
- (3) the alleged victim's family.

(h) A person that knowingly or intentionally:

- (1) receives notification or disclosure of the results of a screening test under this section; and
- (2) discloses the results of the screening test in violation of this section;

commits a Class B misdemeanor.

SECTION 5. IC 35-44-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A person not standing in the relation of parent, child, or spouse to another person who has committed a crime or is a fugitive from justice who, with intent to hinder the apprehension or punishment of the other person, harbors, conceals, or otherwise assists the person commits assisting a criminal, a Class A misdemeanor. However, the offense is:

- (1) a Class D felony if the person assisted has committed a Class B, Class C, or Class D felony; and
- (2) a Class C felony if the person assisted has committed murder or a Class A felony, or if the assistance was providing a deadly weapon.

(b) It is not a defense to a prosecution under this section that the person assisted:

- (1) has not been prosecuted for the offense;
- (2) has not been convicted of the offense; or

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(3) has been acquitted of the offense by reason of insanity.

SECTION 6. IC 35-50-2-8, AS AMENDED BY P.L.71-2005, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) Except as otherwise provided in this section, the state may seek to have a person sentenced as a habitual offender for any felony by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated two (2) prior unrelated felony convictions.

(b) The state may not seek to have a person sentenced as a habitual offender for a felony offense under this section if:

(1) the offense is a misdemeanor that is enhanced to a felony in the same proceeding as the habitual offender proceeding solely because the person had a prior unrelated conviction;

(2) the offense is an offense under IC 9-30-10-16 or IC 9-30-10-17; or

(3) all of the following apply:

(A) The offense is an offense under IC 16-42-19 or IC 35-48-4.

(B) The offense is not listed in section 2(b)(4) of this chapter.

(C) The total number of unrelated convictions that the person has for:

(i) dealing in or selling a legend drug under IC 16-42-19-27;

(ii) dealing in cocaine or a narcotic drug (IC 35-48-4-1);

(iii) dealing in methamphetamine (IC 35-48-4-1.1);

~~(iii)~~ (iv) dealing in a schedule I, II, III controlled substance (IC 35-48-4-2);

~~(iv)~~ (v) dealing in a schedule IV controlled substance (IC 35-48-4-3); and

~~(v)~~ (vi) dealing in a schedule V controlled substance (IC 35-48-4-4);

does not exceed one (1).

(c) A person has accumulated two (2) prior unrelated felony convictions for purposes of this section only if:

(1) the second prior unrelated felony conviction was committed after sentencing for the first prior unrelated felony conviction; and

(2) the offense for which the state seeks to have the person sentenced as a habitual offender was committed after sentencing for the second prior unrelated felony conviction.

(d) A conviction does not count for purposes of this section as a prior unrelated felony conviction if:

(1) the conviction has been set aside;

(2) the conviction is one for which the person has been pardoned;

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or

(3) all of the following apply:

(A) The offense is an offense under IC 16-42-19 or IC 35-48-4.

(B) The offense is not listed in section 2(b)(4) of this chapter.

(C) The total number of unrelated convictions that the person has for:

(i) dealing in or selling a legend drug under IC 16-42-19-27;

(ii) dealing in cocaine or a narcotic drug (IC 35-48-4-1);

(ii) dealing in methamphetamine (IC 35-48-4-1.1);

~~(iii)~~ (iv) dealing in a schedule I, II, III controlled substance (IC 35-48-4-2);

~~(iv)~~ (v) dealing in a schedule IV controlled substance (IC 35-48-4-3); and

~~(v)~~ (vi) dealing in a schedule V controlled substance (IC 35-48-4-4);

does not exceed one (1).

(e) The requirements in subsection (b) do not apply to a prior unrelated felony conviction that is used to support a sentence as a habitual offender. A prior unrelated felony conviction may be used under this section to support a sentence as a habitual offender even if the sentence for the prior unrelated offense was enhanced for any reason, including an enhancement because the person had been convicted of another offense. However, a prior unrelated felony conviction under IC 9-30-10-16, IC 9-30-10-17, IC 9-12-3-1 (repealed), or IC 9-12-3-2 (repealed) may not be used to support a sentence as a habitual offender.

(f) If the person was convicted of the felony in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing under IC 35-38-1-3.

(g) A person is a habitual offender if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had accumulated two (2) prior unrelated felony convictions.

(h) The court shall sentence a person found to be a habitual offender to an additional fixed term that is not less than the advisory sentence for the underlying offense nor more than three (3) times the advisory sentence for the underlying offense. However, the additional sentence may not exceed thirty (30) years.

SECTION 7. IC 35-38-1-10.7 IS REPEALED [EFFECTIVE JULY 1, 2009].

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SECTION 8. [EFFECTIVE JULY 1, 2009] IC 35-38-1-10.8, as added by this act, and IC 35-44-3-2, as amended by this act, apply only to crimes committed after June 30, 2009.

SECTION 9. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commission" refers to the criminal code evaluation commission established by subsection (b).

(b) The criminal code evaluation commission is established to evaluate the criminal laws of Indiana. If, based on the commission's evaluation, the commission determines that changes are necessary or appropriate, the commission shall make recommendations to the general assembly for the modification of the criminal laws.

(c) The commission may study other topics assigned by the legislative council or as directed by the commission chair.

(d) The commission may meet at times the commission determines are necessary during the months of:

- (1) June, July, August, and September of 2009;
- (2) April, May, June, July, August, and September of 2010; and
- (3) June, July, August, and September of 2011.

(e) The commission consists of fifteen (15) members appointed as follows:

- (1) Four (4) members of the senate, not more than two (2) of whom may be affiliated with the same political party, to be appointed by the president pro tempore of the senate.
- (2) Four (4) members of the house of representatives, not more than two (2) of whom may be affiliated with the same political party, to be appointed by the speaker of the house of representatives.
- (3) The attorney general or the attorney general's designee.
- (4) The executive director of the prosecuting attorneys council of Indiana or the executive director's designee.
- (5) The executive director of the public defender council of Indiana or the executive director's designee.
- (6) Two (2) judges who exercise criminal jurisdiction:
 - (A) one (1) of whom shall be appointed by the president pro tempore of the senate; and
 - (B) one (1) of whom shall be appointed by the speaker of the house of representatives.
- (7) Two (2) professors employed by a law school in Indiana whose expertise includes criminal law:
 - (A) one (1) of whom shall be appointed by the president

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1 pro tempore of the senate; and

2 (B) one (1) of whom shall be appointed by the speaker of
3 the house of representatives.

4 (f) The chairman of the legislative council shall appoint a
5 legislative member of the commission to serve as chair of the
6 commission. Whenever there is a new chairman of the legislative
7 council, the new chairman may remove the chair of the commission
8 and appoint another chair.

9 (g) If a legislative member of the commission ceases to be a
10 member of the chamber from which the member was appointed,
11 the member also ceases to be a member of the commission.

12 (h) A legislative member of the commission may be removed at
13 any time by the appointing authority who appointed the legislative
14 member.

15 (i) If a vacancy exists on the commission, the appointing
16 authority who appointed the former member whose position is
17 vacant shall appoint an individual to fill the vacancy.

18 (j) The commission shall submit a final report of the results of
19 its study to the legislative council before November 1, 2011. The
20 report must be in an electronic format under IC 5-14-6.

21 (k) The Indiana criminal justice institute shall provide staff
22 support to the commission to prepare:

- 23 (1) minutes of each meeting; and
- 24 (2) the final report.

25 (l) The legislative services agency shall provide staff support to
26 the commission to:

- 27 (1) advise the commission on legal matters, criminal
28 procedures, and legal research; and
- 29 (2) draft potential legislation.

30 (m) Each member of the commission is entitled to receive the
31 same per diem, mileage, and travel allowances paid to individuals
32 who serve as legislative and lay members, respectively, of interim
33 study committees established by the legislative council.

34 (n) The affirmative votes of a majority of all the members who
35 serve on the commission are required for the commission to take
36 action on any measure, including the final report.

37 (o) Except as otherwise specifically provided by this SECTION,
38 the commission shall operate under the rules of the legislative
39 council. All funds necessary to carry out this SECTION shall be
40 paid from appropriations to the legislative council and the
41 legislative services agency.

42 (p) This SECTION expires December 31, 2011.

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1 SECTION 10. **An emergency is declared for this act.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 34, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 4-6-2-1.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1.1. The attorney general has concurrent jurisdiction with the prosecuting attorney in the prosecution of the following:

- (1) Actions in which a person is accused of committing, while a member of an unlawful assembly as defined in IC 35-45-1-1, a homicide (IC 35-42-1).
- (2) Actions in which a person is accused of assisting a ~~criminal~~ **fugitive** (IC 35-44-3-2) **or obstruction of justice under IC 35-44-3-4(6)**, if the person alleged to have been assisted is a person described in subdivision (1) of this section.
- (3) Actions in which a sheriff is accused of any offense that involves a failure to protect the life of a prisoner in the sheriff's custody.

SECTION 2. IC 11-12-3.7-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. As used in this chapter, "violent offense" means one (1) or more of the following offenses:

- (1) Murder (IC 35-42-1-1).
- (2) Attempted murder (IC 35-41-5-1).
- (3) Voluntary manslaughter (IC 35-42-1-3).
- (4) Involuntary manslaughter (IC 35-42-1-4).
- (5) Reckless homicide (IC 35-42-1-5).
- (6) Aggravated battery (IC 35-42-2-1.5).
- (7) Battery (IC 35-42-2-1) as a Class A felony, Class B felony, or Class C felony.
- (8) Kidnapping (IC 35-42-3-2).
- (9) A sex crime listed in IC 35-42-4-1 through IC 35-42-4-8 that is a Class A felony, Class B felony, or Class C felony.
- (10) Sexual misconduct with a minor (IC 35-42-4-9) as a Class A felony or Class B felony.
- (11) Incest (IC 35-46-1-3).
- (12) Robbery as a Class A felony or a Class B felony (IC 35-42-5-1).

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- (13) Burglary as a Class A felony or a Class B felony (IC 35-43-2-1).
- (14) Carjacking (IC 35-42-5-2).
- (15) Assisting a ~~criminal~~ **fugitive** as a Class C felony (IC 35-44-3-2).
- (16) Escape (IC 35-44-3-5) as a Class B felony or Class C felony.
- (17) Trafficking with an inmate as a Class C felony (IC 35-44-3-9).
- (18) Causing death when operating a motor vehicle (IC 9-30-5-5).
- (19) Criminal confinement (IC 35-42-3-3) as a Class B felony.
- (20) Arson (IC 35-43-1-1) as a Class A or Class B felony.
- (21) Possession, use, or manufacture of a weapon of mass destruction (IC 35-47-12-1).
- (22) Terroristic mischief (IC 35-47-12-3) as a Class B felony.
- (23) Hijacking or disrupting an aircraft (IC 35-47-6-1.6).
- (24) A violation of IC 35-47.5 (Controlled explosives) as a Class A or Class B felony.
- (25) Obstruction of justice (IC 35-44-3-2) as a Class C felony.**
- ~~(25)~~ **(26)** A crime under the laws of another jurisdiction, including a military court, that is substantially similar to any of the offenses listed in this subdivision.
- ~~(26)~~ **(27)** Any other crimes evidencing a propensity or history of violence.

SECTION 3. IC 31-37-4-3, AS AMENDED BY P.L.3-2008, SECTION 240, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) This section applies if a child is arrested or taken into custody for allegedly committing an act that would be any of the following crimes if committed by an adult:

- (1) Murder (IC 35-42-1-1).
- (2) Attempted murder (IC 35-41-5-1).
- (3) Voluntary manslaughter (IC 35-42-1-3).
- (4) Involuntary manslaughter (IC 35-42-1-4).
- (5) Reckless homicide (IC 35-42-1-5).
- (6) Aggravated battery (IC 35-42-2-1.5).
- (7) Battery (IC 35-42-2-1).
- (8) Kidnapping (IC 35-42-3-2).
- (9) A sex crime listed in IC 35-42-4-1 through IC 35-42-4-8.
- (10) Sexual misconduct with a minor (IC 35-42-4-9).
- (11) Incest (IC 35-46-1-3).
- (12) Robbery as a Class A felony or a Class B felony (IC 35-42-5-1).
- (13) Burglary as a Class A felony or a Class B felony



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(IC 35-43-2-1).

(14) Carjacking (IC 35-42-5-2).

(15) Assisting a ~~criminal~~ **fugitive** as a Class C felony (IC 35-44-3-2).

(16) Escape (IC 35-44-3-5) as a Class B felony or Class C felony.

(17) Trafficking with an inmate as a Class C felony (IC 35-44-3-9).

(18) Causing death when operating a motor vehicle (IC 9-30-5-5).

(19) Criminal confinement (IC 35-42-3-3) as a Class B felony.

(20) Arson (IC 35-43-1-1) as a Class A or Class B felony.

(21) Possession, use, or manufacture of a weapon of mass destruction (IC 35-47-12-1).

(22) Terroristic mischief (IC 35-47-12-3) as a Class B felony.

(23) Hijacking or disrupting an aircraft (IC 35-47-6-1.6).

(24) A violation of IC 35-47.5 (controlled explosives) as a Class A or Class B felony.

(25) A controlled substances offense under IC 35-48.

(26) A criminal gang offense under IC 35-45-9.

(27) Obstruction of justice (IC 35-44-3-2) as a Class C felony.

(b) If a child is taken into custody under this chapter for a crime or act listed in subsection (a), the law enforcement agency that employs the law enforcement officer who takes the child into custody shall notify the chief administrative officer of the primary or secondary school, including a public or nonpublic school, in which the child is enrolled or, if the child is enrolled in a public school, the superintendent of the school district in which the child is enrolled:

(1) that the child was taken into custody; and

(2) of the reason why the child was taken into custody.

(c) The notification under subsection (b) must occur within forty-eight (48) hours after the child is taken into custody.

(d) A law enforcement agency may not disclose information that is confidential under state or federal law to a school or school district under this section."

Page 1, line 2, delete "(a)".

Page 1, line 4, strike "has committed a crime or".

Page 1, line 7, strike "criminal, a Class A misdemeanor." and insert **"fugitive, a Class D felony."**

Page 1, line 7, delete ":".

Page 1, strike lines 8 through 10.

Page 1, line 11, strike "or a Class A felony, or" and insert **"a Class C felony"**.

Page 1, run in lines 7 through 11.

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Page 1, delete lines 13 through 17, begin a new paragraph, and insert:

"SECTION 5. IC 35-44-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) A person who:

(1) knowingly or intentionally induces, by threat, coercion, or false statement, a witness or informant in an official proceeding or investigation to:

(A) withhold or unreasonably delay in producing any testimony, information, document, or thing;

(B) avoid legal process summoning ~~him~~ **the person** to testify or supply evidence; or

(C) absent himself **or herself** from a proceeding or investigation to which ~~he~~ **the person** has been legally summoned;

(2) knowingly or intentionally in an official criminal **or juvenile delinquency** proceeding or investigation:

(A) withholds or unreasonably delays in producing any testimony, information, document, or thing after a court orders ~~him~~ **the person** to produce the testimony, information, document, or thing;

(B) avoids legal process summoning ~~him~~ **the person** to testify or supply evidence; or

(C) absents himself **or herself** from a proceeding or investigation to which ~~he~~ **the person** has been legally summoned;

(3) alters, damages, or removes any record, document, or thing, with intent to prevent it from being produced or used as evidence in any official proceeding or investigation;

(4) makes, presents, or uses a false record, document, or thing with intent that the record, document, or thing, material to the point in question, appear in evidence in an official proceeding or investigation to mislead a public servant; ~~or~~

(5) communicates, directly or indirectly, with a juror otherwise than as authorized by law, with intent to influence the juror regarding any matter that is or may be brought before the juror; **or**

(6) knowing or having reason to believe that a person has committed a crime or a delinquent act that would be a crime if committed by an adult, and with intent to hinder the apprehension or punishment of the person, harbors, conceals, or assists in the unlawful flight of the person;

commits obstruction of justice, a Class D felony. **However, the offense is a Class C felony if the assistance given under subdivision (6) was**

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providing a deadly weapon.

(b) Subdivision (a)(2)(A) does not apply to:

- (1) a person who qualifies for a special privilege under IC 34-46-4 with respect to the testimony, information, document, or thing; or
- (2) a person who, as an:
 - (A) attorney;
 - (B) physician;
 - (C) member of the clergy; or
 - (D) husband or wife;

is not required to testify under IC 34-46-3-1.

(c) Subsection (a)(6) does not apply to the:

- (1) parent;**
- (2) child; or**
- (3) spouse;**

of the person described in subsection (a)(6).

SECTION 6. IC 35-47-4-5, AS AMENDED BY P.L.151-2006, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) As used in this section, "serious violent felon" means a person who has been convicted of:

- (1) committing a serious violent felony in:
 - (A) Indiana; or
 - (B) any other jurisdiction in which the elements of the crime for which the conviction was entered are substantially similar to the elements of a serious violent felony; or
- (2) attempting to commit or conspiring to commit a serious violent felony in:
 - (A) Indiana as provided under IC 35-41-5-1 or IC 35-41-5-2; or
 - (B) any other jurisdiction in which the elements of the crime for which the conviction was entered are substantially similar to the elements of attempting to commit or conspiring to commit a serious violent felony.

(b) As used in this section, "serious violent felony" means:

- (1) murder (IC 35-42-1-1);
- (2) voluntary manslaughter (IC 35-42-1-3);
- (3) reckless homicide not committed by means of a vehicle (IC 35-42-1-5);
- (4) battery as a:
 - (A) Class A felony (IC 35-42-2-1(a)(5));
 - (B) Class B felony (IC 35-42-2-1(a)(4)); or
 - (C) Class C felony (IC 35-42-2-1(a)(3));
- (5) aggravated battery (IC 35-42-2-1.5);

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- (6) kidnapping (IC 35-42-3-2);
- (7) criminal confinement (IC 35-42-3-3);
- (8) rape (IC 35-42-4-1);
- (9) criminal deviate conduct (IC 35-42-4-2);
- (10) child molesting (IC 35-42-4-3);
- (11) sexual battery as a Class C felony (IC 35-42-4-8);
- (12) robbery (IC 35-42-5-1);
- (13) carjacking (IC 35-42-5-2);
- (14) arson as a Class A felony or Class B felony (IC 35-43-1-1(a));
- (15) burglary as a Class A felony or Class B felony (IC 35-43-2-1);
- (16) assisting a ~~criminal~~ **fugitive** as a Class C felony (IC 35-44-3-2);
- (17) resisting law enforcement as a Class B felony or Class C felony (IC 35-44-3-3);
- (18) escape as a Class B felony or Class C felony (IC 35-44-3-5);
- (19) trafficking with an inmate as a Class C felony (IC 35-44-3-9);
- (20) criminal gang intimidation (IC 35-45-9-4);
- (21) stalking as a Class B felony or Class C felony (IC 35-45-10-5);
- (22) incest (IC 35-46-1-3);
- (23) dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1);
- (24) dealing in methamphetamine (IC 35-48-4-1.1);
- (25) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2);
- (26) dealing in a schedule IV controlled substance (IC 35-48-4-3);
- or
- (27) dealing in a schedule V controlled substance (IC 35-48-4-4);
- or
- (28) obstruction of justice (IC 35-44-3-2) as a Class C felony.**

(c) A serious violent felon who knowingly or intentionally possesses a firearm commits unlawful possession of a firearm by a serious violent felon, a Class B felony."

Page 2, line 1, after "IC 35-44-3-2," insert "IC 35-44-3-4, and IC 35-47-4-5, all".

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Page 2, line 2, delete "applies" and insert "apply".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 34 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 6, Nays 3.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 34, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:

"SECTION 1. IC 34-30-2-149.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 149.4. IC 35-38-1-10.8(e) (Concerning a mental health service provider who discloses information in compliance with IC 35-38-1-10.8).**

SECTION 2. IC 35-38-1-10.5, AS AMENDED BY P.L.125-2007, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10.5. (a) The court:

(1) shall order that a person undergo a screening test for the human immunodeficiency virus (HIV) if the person is:

(A) convicted of an offense relating to a criminal sexual act and the offense created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); or

(B) convicted of an offense relating to controlled substances and the offense involved:

(i) the delivery by any person to another person; or

(ii) the use by any person on another person;

of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact; and

(2) may order that a person undergo a screening test for the human immunodeficiency virus (HIV) if the court has made a finding of probable cause after a hearing under section ~~10.7~~ **10.8**

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of this chapter.

(b) If the screening test required by this section indicates the presence of antibodies to HIV, the court shall order the person to undergo a confirmatory test.

(c) If the confirmatory test confirms the presence of the HIV antibodies, the court shall report the results to the state department of health and require a probation officer to conduct a presentence investigation to:

- (1) obtain the medical record of the convicted person from the state department of health under IC 16-41-8-1(a)(3); and
- (2) determine whether the convicted person had received risk counseling that included information on the behavior that facilitates the transmission of HIV.

(d) A person who, in good faith:

- (1) makes a report required to be made under this section; or
- (2) testifies in a judicial proceeding on matters arising from the report;

is immune from both civil and criminal liability due to the offering of that report or testimony.

(e) The privileged communication between a husband and wife or between a health care provider and the health care provider's patient is not a ground for excluding information required under this section.

(f) A mental health service provider (as defined in IC 34-6-2-80) who discloses information that must be disclosed to comply with this section is immune from civil and criminal liability under Indiana statutes that protect patient privacy and confidentiality.

SECTION 3. IC 35-38-1-10.6, AS AMENDED BY P.L.125-2007, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10.6. (a) The state department of health shall notify victims of an offense relating to a criminal sexual act or an offense relating to controlled substances if tests conducted under section 10.5 or ~~10.7~~ **10.8** of this chapter confirm that the person tested had antibodies for the human immunodeficiency virus (HIV).

(b) The state department of health shall provide counseling to persons notified under this section.

SECTION 4. IC 35-38-1-10.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 10.8. (a) The following definitions apply throughout this section:**

- (1) **"Bodily fluid" means blood, human waste, or any other bodily fluid.**
- (2) **"Dangerous disease" means any of the following:**

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- (A) Chancroid.
- (B) Chlamydia.
- (C) Gonorrhea.
- (D) Hepatitis.
- (E) Human immunodeficiency virus (HIV).
- (F) Lymphogranuloma venereum.
- (G) Syphilis.
- (H) Tuberculosis.

(3) "Offense involving the transmission of a bodily fluid" means any offense (including a delinquent act that would be a crime if committed by an adult) in which a bodily fluid is transmitted from the defendant to the victim in connection with the commission of the offense.

(4) "Potentially disease transmitting offense" means any of the following:

- (A) Battery by body waste (IC 35-42-2-6).
- (B) Rape (IC 35-42-4-1).
- (C) Criminal deviate conduct (IC 35-42-4-2).
- (D) Child molesting involving intercourse or deviate sexual conduct (IC 35-42-4-3(a)).
- (E) Child seduction (IC 35-42-4-7).
- (F) Sexual misconduct with a minor (IC 35-42-4-9).
- (G) Sexual misconduct by a service provider (IC 35-44-1-5).
- (H) Incest (IC 35-46-1-3).

The term includes an attempt to commit an offense referred to in clauses (A) through (H) and a delinquent act that would be a crime referred to in clauses (A) through (H) if committed by an adult.

(b) This subsection applies only to a defendant who has been charged with a potentially disease transmitting offense. The prosecuting attorney may petition a court to order a defendant charged with the commission of a potentially disease transmitting offense to submit to a screening test to determine whether the defendant is infected with a dangerous disease. In the petition, the prosecuting attorney must set forth information demonstrating that the defendant has committed a potentially disease transmitting offense. The court shall set the matter for hearing not later than forty-eight (48) hours after the prosecuting attorney files a petition under this subsection. The alleged victim of the potentially disease transmitting offense with which the defendant is charged is entitled to attend the hearing. If, following the hearing, the court finds

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probable cause to believe that the defendant has committed a potentially disease transmitting offense, the court may order the defendant to submit to a screening test for one (1) or more dangerous diseases.

(c) This subsection applies only to a defendant who has been charged with an offense involving the transmission of a bodily fluid. The prosecuting attorney may petition a court to order a defendant charged with the commission of an offense involving the transmission of a bodily fluid to submit to a screening test to determine whether the defendant is infected with a dangerous disease. In the petition, the prosecuting attorney must set forth information demonstrating that:

- (1) the defendant has committed an offense; and
- (2) a bodily fluid was transmitted from the defendant to the victim in connection with the commission of the offense.

The court shall set the matter for hearing not later than forty-eight (48) hours after the prosecuting attorney files a petition under this subsection. The alleged victim of the offense involving the transmission of a bodily fluid with which the defendant is charged is entitled to attend the hearing. If, following the hearing, the court finds probable cause to believe that the defendant has committed an offense and that a bodily fluid was transmitted from the defendant to the alleged victim in connection with the commission of the offense, the court may order the defendant to submit to a screening test for one (1) or more dangerous diseases.

(d) The testimonial privileges applying to communication between a husband and wife and between a health care provider and the health care provider's patient are not sufficient grounds for not testifying or providing other information at a hearing conducted in accordance with this section.

(e) A mental health service provider (as defined in IC 34-6-2-80) who discloses information that must be disclosed to comply with this section is immune from civil and criminal liability under Indiana statutes that protect patient privacy and confidentiality.

(f) The results of a screening test conducted under this section shall be kept confidential if the defendant ordered to submit to the screening test under this section has not been convicted of the potentially disease transmitting offense or offense involving the transmission of a bodily fluid with which the defendant is charged. The results may not be made available to any person or public or private agency other than the following:

- (1) The defendant and the defendant's counsel.



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- (2) The prosecuting attorney.
- (3) The department of correction.
- (4) The alleged victim and the alleged victim's counsel.

The results of a screening test conducted under this section may not be admitted against a defendant in a criminal proceeding.

(g) An alleged victim may disclose the results of a screening test to which a defendant is ordered to submit under this section to an individual or organization to protect the health and safety of or to seek compensation for:

- (1) the alleged victim;
- (2) the alleged victim's sexual partner; or
- (3) the alleged victim's family.

(h) A person that knowingly or intentionally:

- (1) receives notification or disclosure of the results of a screening test under this section; and
- (2) discloses the results of the screening test in violation of this section;

commits a Class B misdemeanor.

SECTION 5. IC 35-44-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A person not standing in the relation of parent, child, or spouse to another person who has committed a crime or is a fugitive from justice who, with intent to hinder the apprehension or punishment of the other person, harbors, conceals, or otherwise assists the person commits assisting a criminal, a Class A misdemeanor. However, the offense is:

- (1) a Class D felony if the person assisted has committed a Class B, Class C, or Class D felony; and
- (2) a Class C felony if the person assisted has committed murder or a Class A felony, or if the assistance was providing a deadly weapon.

(b) It is not a defense to a prosecution under this section that the person assisted:

- (1) has not been prosecuted for the offense;
- (2) has not been convicted of the offense; or
- (3) has been acquitted of the offense by reason of insanity.

SECTION 6. IC 35-50-2-8, AS AMENDED BY P.L.71-2005, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) Except as otherwise provided in this section, the state may seek to have a person sentenced as a habitual offender for any felony by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated two (2) prior unrelated felony convictions.



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(b) The state may not seek to have a person sentenced as a habitual offender for a felony offense under this section if:

- (1) the offense is a misdemeanor that is enhanced to a felony in the same proceeding as the habitual offender proceeding solely because the person had a prior unrelated conviction;
- (2) the offense is an offense under IC 9-30-10-16 or IC 9-30-10-17; or
- (3) all of the following apply:
 - (A) The offense is an offense under IC 16-42-19 or IC 35-48-4.
 - (B) The offense is not listed in section 2(b)(4) of this chapter.
 - (C) The total number of unrelated convictions that the person has for:
 - (i) dealing in or selling a legend drug under IC 16-42-19-27;
 - (ii) dealing in cocaine or a narcotic drug (IC 35-48-4-1);
 - (iii) dealing in methamphetamine (IC 35-48-4-1.1);**
 - ~~(iii)~~ **(iv)** dealing in a schedule I, II, III controlled substance (IC 35-48-4-2);
 - ~~(iv)~~ **(v)** dealing in a schedule IV controlled substance (IC 35-48-4-3); and
 - ~~(v)~~ **(vi)** dealing in a schedule V controlled substance (IC 35-48-4-4);

does not exceed one (1).

(c) A person has accumulated two (2) prior unrelated felony convictions for purposes of this section only if:

- (1) the second prior unrelated felony conviction was committed after sentencing for the first prior unrelated felony conviction; and
- (2) the offense for which the state seeks to have the person sentenced as a habitual offender was committed after sentencing for the second prior unrelated felony conviction.

(d) A conviction does not count for purposes of this section as a prior unrelated felony conviction if:

- (1) the conviction has been set aside;
- (2) the conviction is one for which the person has been pardoned; or
- (3) all of the following apply:
 - (A) The offense is an offense under IC 16-42-19 or IC 35-48-4.
 - (B) The offense is not listed in section 2(b)(4) of this chapter.
 - (C) The total number of unrelated convictions that the person has for:
 - (i) dealing in or selling a legend drug under IC 16-42-19-27;

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- (ii) dealing in cocaine or a narcotic drug (IC 35-48-4-1);
- (ii) dealing in methamphetamine (IC 35-48-4-1.1);**
- ~~(iii)~~ **(iv)** dealing in a schedule I, II, III controlled substance (IC 35-48-4-2);
- ~~(iv)~~ **(v)** dealing in a schedule IV controlled substance (IC 35-48-4-3); and
- ~~(v)~~ **(vi)** dealing in a schedule V controlled substance (IC 35-48-4-4);

does not exceed one (1).

(e) The requirements in subsection (b) do not apply to a prior unrelated felony conviction that is used to support a sentence as a habitual offender. A prior unrelated felony conviction may be used under this section to support a sentence as a habitual offender even if the sentence for the prior unrelated offense was enhanced for any reason, including an enhancement because the person had been convicted of another offense. However, a prior unrelated felony conviction under IC 9-30-10-16, IC 9-30-10-17, IC 9-12-3-1 (repealed), or IC 9-12-3-2 (repealed) may not be used to support a sentence as a habitual offender.

(f) If the person was convicted of the felony in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing under IC 35-38-1-3.

(g) A person is a habitual offender if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had accumulated two (2) prior unrelated felony convictions.

(h) The court shall sentence a person found to be a habitual offender to an additional fixed term that is not less than the advisory sentence for the underlying offense nor more than three (3) times the advisory sentence for the underlying offense. However, the additional sentence may not exceed thirty (30) years."

Delete pages 2 through 6.

Page 7, delete lines 1 through 11, begin a new paragraph and insert: "SECTION 7. IC 35-38-1-10.7 IS REPEALED [EFFECTIVE JULY 1, 2009]."

Page 7, line 12, before "IC 35-44-3-2," insert "**IC 35-38-1-10.8, as added by this act, and**".

Page 7, line 13, delete "IC 35-44-3-4, and IC 35-47-4-5, all".

Page 7, after line 14, begin a new paragraph and insert:

"SECTION 9. [EFFECTIVE UPON PASSAGE] **(a) As used in this SECTION, "commission" refers to the criminal code evaluation**

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commission established by subsection (b).

(b) The criminal code evaluation commission is established to evaluate the criminal laws of Indiana. If, based on the commission's evaluation, the commission determines that changes are necessary or appropriate, the commission shall make recommendations to the general assembly for the modification of the criminal laws.

(c) The commission may study other topics assigned by the legislative council or as directed by the commission chair.

(d) The commission may meet at times the commission determines are necessary during the months of:

- (1) June, July, August, and September of 2009;
- (2) April, May, June, July, August, and September of 2010; and
- (3) June, July, August, and September of 2011.

(e) The commission consists of fifteen (15) members appointed as follows:

- (1) Four (4) members of the senate, not more than two (2) of whom may be affiliated with the same political party, to be appointed by the president pro tempore of the senate.
- (2) Four (4) members of the house of representatives, not more than two (2) of whom may be affiliated with the same political party, to be appointed by the speaker of the house of representatives.
- (3) The attorney general or the attorney general's designee.
- (4) The executive director of the prosecuting attorneys council of Indiana or the executive director's designee.
- (5) The executive director of the public defender council of Indiana or the executive director's designee.
- (6) Two (2) judges who exercise criminal jurisdiction:
 - (A) one (1) of whom shall be appointed by the president pro tempore of the senate; and
 - (B) one (1) of whom shall be appointed by the speaker of the house of representatives.
- (7) Two (2) professors employed by a law school in Indiana whose expertise includes criminal law:
 - (A) one (1) of whom shall be appointed by the president pro tempore of the senate; and
 - (B) one (1) of whom shall be appointed by the speaker of the house of representatives.

(f) The chairman of the legislative council shall appoint a legislative member of the commission to serve as chair of the

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commission. Whenever there is a new chairman of the legislative council, the new chairman may remove the chair of the commission and appoint another chair.

(g) If a legislative member of the commission ceases to be a member of the chamber from which the member was appointed, the member also ceases to be a member of the commission.

(h) A legislative member of the commission may be removed at any time by the appointing authority who appointed the legislative member.

(i) If a vacancy exists on the commission, the appointing authority who appointed the former member whose position is vacant shall appoint an individual to fill the vacancy.

(j) The commission shall submit a final report of the results of its study to the legislative council before November 1, 2011. The report must be in an electronic format under IC 5-14-6.

(k) The Indiana criminal justice institute shall provide staff support to the commission to prepare:

- (1) minutes of each meeting; and
- (2) the final report.

(l) The legislative services agency shall provide staff support to the commission to:

- (1) advise the commission on legal matters, criminal procedures, and legal research; and
- (2) draft potential legislation.

(m) Each member of the commission is entitled to receive the same per diem, mileage, and travel allowances paid to individuals who serve as legislative and lay members, respectively, of interim study committees established by the legislative council.

(n) The affirmative votes of a majority of all the members who serve on the commission are required for the commission to take action on any measure, including the final report.

(o) Except as otherwise specifically provided by this SECTION, the commission shall operate under the rules of the legislative council. All funds necessary to carry out this SECTION shall be paid from appropriations to the legislative council and the legislative services agency.

(p) This SECTION expires December 31, 2011.

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SECTION 10. **An emergency is declared for this act."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 34 as printed February 6, 2009.)

PIERCE, Chair

Committee Vote: yeas 10, nays 0.

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